

### ARGUMENTS/REMARKS

Applicants would like to thank the examiner for the careful consideration given the present application. The application has been carefully reviewed in light of the Office action, and amended as necessary to more clearly and particularly describe and claim the subject matter which applicants regard as the invention.

Applicant notes that this response is filed with an RCE, and applicant requests that a personal interview be conducted between applicant, applicant's representative, and the Examiner before an action is generated to this response.

Claims 1-34 remain in this application. New claims 35-51 have been added without adding any new matter.

The specification, and claim amendments filed in the response of September 21, 2006 are objected to by the Examiner for a number of reasons under 35 U.S.C. §132(a) for adding new disclosure. Claims 1, 14, 29, 30, and 34 were also rejected under 35 U.S.C. §112, first paragraph, for lack of proper written description supporting the amendments. The objections and rejections are traversed for the following reasons:

First, the matter relating to the Examiner's objections/rejections are not specifically identified. The Examiner merely repeats new claim language verbatim without identifying the matter that is considered new. Thus, applicant finds it difficult to respond to the rejection. However, applicant notes the following:

First, the term "automatically" is used 40 times in the specification to refer to the practice of the invention. See, for example, pages 4-5, 7-9, 23, 26, 35, 41, 46, 50, 54, 57-58, and 60.

Furthermore, the "drill-down" methodology is discussed on pages 7 (referring to figure 9), 26-27, 30, 60, and 67, and is also discussed in the applications incorporated by reference. The drill-down methodology and its automation is also discussed in more detail in co-pending applications serial numbers 09/871,279, and 10/011,014, which are both incorporated by reference.

In addition, the specification supports feedback based on the type of participant being surveyed and based on historical information. For example, the top of page 23 discusses the use of historical information.

Regarding patient participants, page 12, last paragraph, states that the system "queries the respondent in a variable fashion within each core domain" and that "questions are presented to each respondent based upon the respondent's last

responses, and/or based on particular information about the respondent”. The last paragraph of page 13 recites that “[in] some cases, the Patient Viewpoint Module 202 will present a brief report of the respondent’s results back to the patient...before closing...[allowing] the respondent to know how their responses compare to a similar cohort of respondents.” Page 21, last paragraph, states that the “Personal Clinical Data analysis module 208 tailors the data collection and data presentation to the needs and specific situation of a particular respondent.” Page 22, at the top, discusses presenting the patient survey results to the patient in a manner tailored to the patient. At the top of page 23 is discussed the “Historical Data Repository on Clinic Performance 212”, where it is discussed that it is possible to “store and analyze the responses from millions of respondents”. The material of pages 23-25 discuss surveying and using survey results depending on whether the participant is a patient or a physician group. Accordingly, feedback and presentations provided to the customer are tailored to the fact that a particular participant is a customer.

In contrast, employee and manager information is customized based on that user. For example, page 22, last full paragraph, discusses different data that is presented to clinicians. Page 25, first paragraph, discussed the “Office Team Viewpoint Survey Module” being used to “collect and assess information about employees of the office”. The first partial paragraph on page 26 discusses presenting relevant questions to the worker respondents. The material in the last full paragraph of 27 discusses surveying and using survey results for employees, including presenting results customized to these respondents. Page 28, first full paragraph and second paragraph, discusses surveying managers with data specific to managers. The discussion of the “Value Compass” on pages 31-33 discuss the various data and viewpoints that are collected and assessed, and on page 33 it is discussed that the raw data is “processed, formatted, and made available to the appropriate persons. Thus, the employee and management information is clearly different than the material for patient surveys discussed on pages 23-25. Thus, feedback and presentations provided to the employee are tailored to the fact that a particular participant is an employee or manager.

Finally, the original claims discuss many of these features as well, and the claims have been amended, which may make these objections/rejections moot.

Accordingly, it is applicant’s opinion that the claims, as currently amended, are supported by the specification and the incorporated documents, and thus are not

new matter and hence the material need not be canceled. The Examiner is requested to point out specifically exactly what material he considers not supported by the specification should he decide to maintain these objections.

Claims 1-11 and 14-34 were again rejected under 35 U.S.C. §103(a) as being unpatentable over Kraftson et al. (U.S. 6,151,581) in view of Joao (U.S. 6,283,761), and in view of Siegrist, Jr. *et al.* (U.S. 5,652,842). Claims 12-13 were rejected under 35 U.S.C. §103(a) as being unpatentable over Kraftson, Joao, and Siegrist, in further view of Plantec *et al.*, (U.S. 6,826,540). For the following reasons, the rejections are respectfully traversed.

Claim 1 recites a survey system that has been amended to include the feature that

said system automatically displays survey results to each survey participant utilizing historical survey data, said displayed analyzed feedback formatted in a *custom manner based on whether the current survey participant is a customer, or is an employee or a manager*

(emphasis added). None of the references teach or suggest that historical survey data is used to display survey results to the survey participant, where the material is formatted in a custom manner based on whether the participant is a customer or an employee or a manager. The Examiner cites Joao at col. 4, lines 27-33 and col. 19 at lines 7-11 and col. 20 at lines 21-27 as providing such a teaching. However, a review of these sections finds no such teachings, either explicitly or implicitly. Thus, claim 1 is patentable over the references. Amended claims 14, 29, 30, 31, and claim 34 also include limitations that are similar (but perhaps of a different scope) to those cited above for claim 1, and thus they are also patentable over the references, as are claims 2-11, and 15-28, which depend, directly or indirectly, upon one of claims 1 and 14.

Furthermore, the Examiner argues that various “non-functional descriptive material” will not distinguish the claimed invention, citing *In re Nagi* 367 F.3d 1336, 1339, 70 USPQ2d 1962, 1864 (Fed. Cir. 2004) and *In re Gulack*, 703 F.2d 1381,1385 (Fed. Cir. 1983). This is not a proper rejection. The Examiner argues that “nonfunctional descriptive material” are features that cannot alter how a machine functions (i.e., does not reconfigure the computer). The Examiner argues that “practice data, historical performance data, pathophysiologic normative data, etc.) will not distinguish the claimed invention from the prior art in terms of patentability.

The Examiner ignores the fact that such data does, indeed, alter how a computer using the routines of the invention functions. For example, claim 12 recites a patient viewpoint program for providing patient viewpoint survey scripts to said external surveying system for obtaining participant viewpoint data from the patient

and then the claim recites specific content for the “participant viewpoint data” Obviously, these specific scripts must be properly programmed to provide computer functionality to provide such data, and thus this data rejected by the Examiner as being merely “descriptive” clearly is *not* merely descriptive, but requires that the computer perform specific functions in order to support it. Scripts for obtaining specific data are clearly functional in nature, and thus cannot be called “non-functional descriptive material”. Thus, these rejections on these grounds are not proper.

Accordingly, claim 12, and claim 13 which depends on claim 12, are patentable over the references. Any remaining claims are patentable at least for one of the reasons discussed above, or by nature of their dependency upon one of the above discussed claims.

New claims 35-51 all recited limitations that survey results are provided in real-time or near real-time with respect to the survey. None of the references discuss such a feature, and thus these claims are patentable over the references for at least that reason.

Finally, as discussed in the previous response, the Examiner has not provided the proper motivation for supporting a prima facie case of obviousness, and thus the rejections are not proper for this reason as well.

In consideration of the foregoing analysis, it is respectfully submitted that the present application is in a condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in a condition for allowance, the examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application.

If there are any additional fees resulting from this communication, please charge same to our Deposit Account No. 16-0820, our Order No. 33035US1.

Respectfully submitted,  
PEARNE & GORDON, LLP

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By:                     / Robert F. Bodi /                    

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